



STATE OF DELAWARE

PUBLIC SERVICE COMMISSION

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MEMORANDUM

TO: The Chair and Members of the Commission

FROM: Lisa B. Driggins, Public Utilities Analyst 

DATE: March 31, 2015

SUBJECT: IN THE MATTER OF THE APPLICATION OF ARTESIAN WATER COMPANY, INC. FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE WATER SERVICES PURSUANT TO 26 DEL. C. §203C ("E. EUGENE BULLEN") (SUBMITTED JANUARY 13, 2015; FILED JANUARY 22, 2015; AMENDED FEBRUARY 25, 2015; AMENDED MARCH 18, 2015)
PSC DOCKET NO. 15-0646

On January 13, 2015, Artesian Water Company, Inc. ("Artesian" or the "Company") submitted an application ("Application") with the Delaware Public Service Commission (the "Commission") seeking a Certificate of Public Convenience and Necessity ("CPCN") to provide water services to one parcel of land in New Castle County, Delaware, known as E. Eugene Bullen (the "Proposed Service Area") pursuant to 26 *Del. C.* §203C(e)(1)b. As noted below, this Application has been amended twice.

As required by 26 *Del. C.* §203C(e)(1)b. and the Commission's Regulations Governing Certificates of Public Convenience and Necessity for Water Utilities, 26 *Del. Admin. C.* §2002 (the "Regulations"), the submitted Application contained the following documentation: (1) a copy of a petition signed by all of the landowners of record included in the Proposed Service Area requesting to be included in the Proposed Service Area; (2) copies of the United States Postal Service forms verifying that the Company sent, via certified mail, a Commission approved notice to all landowners of record of each parcel included in the Proposed Service Area; (3) a list of the County tax map parcel identification numbers of the properties and identification of all landowners of record included in the Proposed Service Area;¹ and (4) a copy of the associated tax map clearly marking the Proposed Service Area. Additionally, the Application contained Artesian's statement that its expansion of service to the Proposed Service Area will comply with the water pressure requirements of 26 *Del. C.* §§403(a) and (b) and that Artesian is not barred by any of the restrictions set forth in 26 *Del. C.* §403(c).

¹At Staff's request, Artesian submitted a written certification that the Company (i) reviewed the appropriate tax or land record documents relating to the Proposed Service Area; (ii) confirmed that the landowner identified in the parcel listing are the landowners of record; and (iii) confirmed that the petitions included in the Application have been signed by each landowner of record.

The original filing included evidence that pursuant to 26 *Del. Admin C.* § 2002-3.5,² Artesian sent the required notice of the Application via certified mail on October 28, 2014. The filing also included evidence that Artesian had sent a second certified mailing to the landowner on December 10, 2014. However, there was no evidence that the landowner received either mailing and Staff requested clarification from the Company. On January 22, 2015, Staff received additional documentation showing that the original landowner notification was unclaimed pursuant to 26 *Del. Admin C.* § 2002-3.5.2.³ It appears the address was correct but the mail was not picked up. On March 18, 2015, Artesian provided evidence that the second notice had been received and signed for by the landowner of record.

In addition to the required notification to all the landowners of record in the Proposed Service Area, Artesian published a notice in The News Journal on January 16, 2015, and Delaware State News newspaper on February 10, 2015. The notice advised residents of the Application, that the Application may be reviewed at the Commission's office during normal business hours or on the Commission's website, that a hearing on this matter would not be held unless an appropriate request for a hearing was received, and that the property owner may object to or "opt-out" of the Proposed Service Area. To date, no comments regarding the Company or this Application have been received, and no landowners of record included in the Proposed Service Area have objected to the Application or elected to "opt-out" of the Proposed Service Area. Artesian unintentionally failed to publish one of the two required above public notices within 10 days in accordance with Rule 10.7 of the Regulations. Artesian was made aware of this deficiency by Staff and the Company moved expeditiously to satisfy the publishing requirement and provided proof of publication.

On February 25, 2015, the Company filed an amendment to the Application (the "Amended Application") showing proof of publication. In addition, Artesian filed a request with the Commission for a waiver of Section 10.7 of the Regulations that requires the publication to be made within 10 days of the filing date. As a "good cause," the Company stated that "Artesian notes the failure to publish the public notices was an inadvertent omission and requests that the PSC waive the publishing requirement as allowed by Rule 1.5 of the Regulations and permit the application for a CPCN for W. Eugene Bullen to proceed expeditiously." Artesian also submits that the grant of a waiver is in the public interest as the company has satisfied the publishing requirement and satisfied the landowner notice requirement. The application involves service to a single parcel and should not be unduly disruptive for customers. Artesian also submits that granting the waivers provides for an administratively effective use of resources. The extension of water service, as requested by W. Eugene Bullen, will not harm or degrade Artesian's ability to provide safe, reliable water service for present customers. Artesian requested that the PSC accept the publications and grant a CPCN so the Company may begin to initiate water service to W. Eugene Bullen. Staff believes that the reasons given as "good cause" justify a waiver, therefore Staff recommends that the Commission grant the requested waiver of the publication requirement as set forth in Section 10.7 of the Regulations.

² 26 *Del. Admin C.* § 2002-3.5 requires copies of relevant Postal Service forms demonstrating that the applicant sent by certified mail the appropriate form of notice as required by the Regulations to each landowner of record of each parcel encompassed within the Proposed Service Area.

³ Under 26 *Del. Admin. C.* §2002-3.5.2, if a Landowner Notification is returned for any reason copies of all material or messages provided to the applicant by the Postal Service reflecting either delivery of certified mail or failure of certified mail delivery because the delivery was "refused," "unclaimed," "undeliverable," "unknown," or otherwise not completed. The Company failed to provide such evidence in the originally-submitted application.

Staff reviewed the Amended Application to ensure compliance with the statutory provisions of 26 *Del. C.* §203C and the Regulations. No errors or omissions were found. Finally, to determine whether the Commission should deny the requested CPCN as set forth in 26 *Del. C.* §203C(f), Staff solicited comments from the Delaware Department of Natural Resources and Environmental Control, the Office of the State Fire Marshal, and the Office of Drinking Water of the Division of Public Health. All three agencies responded and confirmed they have no issues relating to Artesian's ability to provide safe, adequate, and reliable water services to its existing customers.

In summary, Artesian has submitted the necessary proof required by the provisions of 26 *Del. C.* §§203C(e)(1), 203C(e)(1)b., 203C(e)(3) and the Regulations for issuance of a CPCN. Staff also finds no reason to deny the Company a CPCN under the provisions of 26 *Del. C.* §203C(f). Therefore, Staff recommends that the Commission grant the Company a CPCN based on the Amended Application and the company's waiver request.